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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 448 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT SECURITY GUARDS SERVICS

Versus

O N G C LTD

Appearance:

MR MH THAKORE FOR MR AK CLERK for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1

MR KRISHNA G PILLAI for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:- 04/05/2001

ORAL JUDGEMENT

Rule.

2. This petition has been filed for declaring clause 1 (k) of the technical bid, 2 (b) & (d) of the commercial bid as illegal, null and void and also for declaring the

action of the respondent - Oil & Natural Gas Corporation Limited (hereinafter referred to as the respondent Corporation for brevity and convenience) in treating the petitioner as disqualified in the technical bid pursuant to the tender document dated 6-11-2000 as illegal, null and void and for restraining the respondent Corporation from accepting the price bid of any party other than the petitioner and further restraining the respondent Corporation from awarding the contract or work order to any party other than the petitioner.

3. The respondent Corporation invited the tenders 1994 for security arrangement under Ahmedabad Project and the petitioner had filled up the tender with the necessary EMD of Rs.2 lacs and the petitioner was found to be qualified in the technical bid. However, pursuant to the said tender the contract could not be awarded to the petitioner due to interim order passed by the competent Court. The respondent Corporation again invited the tenders in the year 1999 which were to be sold from 12-7-1999 till 2-8-1999 and the closing date of the tender was 2-8-1999 in respect of the job contract for a period of two years for executing the job of intelligence, surveillance, patrolling and protection to ONGC installations and Personnel, Store Yards, Moving Drilling Rigs/Work-over rigs, Wells, Workshops, Oil Field etc. situated in Ahmedabad, Gandhinagar, Mehsana, Kheda and Anand Districts of Gujarat under the jurisdiction of Ahmedabad Project of ONGC. The EMD for the tender was Rs.10,24,000/- and hence the petitioner filled in the tender by giving a Bank guarantee of Rs.10,24,000/- as required under the terms conditions of the tender. The petitioner was qualified for the technical bid according to BEC. The conditions of the regarding the minimum wages was as under :

"22 - MINIMUM WAGES : - The minimum wages mentioned in the Tender Documents are the same as issued from the office of the Regional Labour Commissioner, Government of India, Ministry of Labour, Ahemdabad, from time to time/State Government whichever is higher for different categories."

3. At the relevant time, the circular dated 5-4-1999 issued by the Regional Labour Commissioner (Central), Ministry of Labour, Government of India, Shram Bhavan, Near Gun House, Khanpur, Ahmedabad providing for minimum wages with effect from 1-4-1999 was in force and that circular divided the areas into three zones. The municipal corporation area of the city of Ahmedabad was

in Zone-A, Baroda, Surat, Rajkot and Bhavnagar were included in Zone-B and the remaining areas of Gujarat were included in Zone-C. The contract was in respect of the areas situated in Ahmedabad, Gandhinagar, Mehsana Kheda and Anand Districts of Gujarat and these areas falling within ZONE-C of the circular dated 5-4-1999. Therefore, the petitioner filled in the rates of minimum wages as prescribed and prevailing at the relevant time. The price bid or the commercial bid for the said tender was opened on 2-3-2000 and the petitioner was found to be lowest. Hence, the petitioner ought to have awarded the contract as he was found qualified in the technical bid and lowest in the price bid. But the respondent Corporation arbitrarily and illegally cancelled the tender of the petitioner and did not award the contract to the petitioner. On the basis of the letter dated 5-5-2000 regarding the uniform minimum wages applicable to all the zones is produced by the respondent no. 2 before the respondent Corporation. At the relevant time, uniform minimum wages were not applicable and the circular of the Regional Commissioner dated 5-4-1999 was prevailing at the relevant time. Hence, the petitioner was entitled to get the contract with necessary revision in the minimum wages. But the clarification regarding the area was subsequently made by the respondent Corporation. Pursuant to Clause 42 (a) - Escalation Clause - on account of revision of minimum wages as and when revised and notified from time to time by RLC(C)/ALL(C)/Ahmedabad/State Government, which ever is higher will be reimbursed to the contractor. The petitioner's tender was cancelled arbitrarily by the respondent Corporation and the respondent Corporation returned EMD of Rs.10,24,000/- collected from the petitioner in respect of the tender. Thereafter, the respondent Corporation again invited the tenders for the same work of providing securing arrangements for the same areas under Ahmedabad Project of respondent. The tenders were sold between 6-11-2000 to 27-11-2000 and the technical bid was to be opened on 27-11-2000. EMD for this tender was Rs.10,60,000/- and the petitioner paid the same. Clause regarding minimum wages as mentioned in Clause 22 is reproduced below :

> "The minimum wages mentioned in the Tender Documents are the same as issued from the office of the Regional Labour Commissioner, Govt. of India, Ministry of Labour, Ahmedabad from time to time/State Govt. whichever is higher for different categories based on the Minimum wages given for Ahmedabad area "A" in Highly Skilled, Skilled and Semi Skilled Categories. Entire area

of development of security points will be considered as falling under Area "A" as clarified by RLC (C)vide his letter No.AH/95 (2)2000-RLC dated 05-05-2000 and payment of wages will be regulated accordingly."

4. It is also stated by the petitioner that earlier tender dated 12-7-1999 was cancelled only on the ground of clarification of the areas by the Regional Labour Commissioner vide its letter dated 5-5-2000. The only change in the tender form should have been in the condition regarding minimum wages since the tender was for the security arrangement for the same area. The value of the tender for two years is approximately Rs.543 lacs which is the same as in the cancelled tender. EMD for the tender dated 6-11-2000 is Rs.10,60,000/- which is only marginally higher than Rs. 10,24,000/- for the tender dated 12-7-1999. Since, the petitioner was qualified in the technical bid for the year 1994-95 as well as for the year 1999-2000 in the tender dated 12-7-1999, the respondent Corporation came to know about the capacity, turnover and other details of the petitioner and also knew that the petitioner was lowest in the tender dated 12-7-1999. With a view to eliminating the petitioner from the competition and with a view to select only one particular person/party i.e. the respondent no. 2 for awarding the contract made following changes in the tender which are incorporated malafide and are tailor made to suit a particularly party.

" Clause :- 2 (b) of the tender dated 12-07-1999 requires solvency certificate of Rs. 50 lacs whereas the same clause in the tender dated 06-11-2000 requires solvency certificate of Rs. 1 Crore.

Clause :- 2 (d) the commercial bid of the tender form dated 12-07-1999 requires the annual turn over of Rs.68,87,000/- (3 % of the value of one year) in any two years of the last three financial years whereas the same paragraph for the tender dated 06-11-2000 requires the annual turn over of Rs. 2 crores.

Clause 1(1) of the Technical Bid in the tender form dated 12-07-1999 requires a single contract of annual value of not less than Rs.35 lacs whereas the condition no. 1 (k) of the technical bid of the tender form dated 06-11-2000 requires a single contract of the annual value of

not less than Rs.1 crore.

5. On comparison of the terms of two tenders dated 12-7-1999 and 6-11-2000, it is apparent that the requirement of single contract has been increased from Rs.35 lacs to Rs.1 crore. Requirement of insolvency certificate has been increased from Rs.50 lacs to Rs.1 crore. Whereas, annual turn over was Rs.68,87,000/- to Rs.2 crores. Thus, there is three times increase in the requirement of annual value of the single contract and the requirement of annual turn over and increase of two times in the requirement of solvency certificate, have been changed in the subsequent tender dated 6-11-2000.

6. Five parties have filed the tender forms and out of them, only one party was qualified for technical bid which was opened on 27-11-2000, as per the information of the petitioner and this was done only to qualify only one party in technical bid and there is no competition in the commercial bid or price bid and the contract can be awarded to that party i.e. the respondent no. 2. Price bid or the commercial bid of any tenderer for the tender dated 6-11-2000 has not been opened so far and no contract or work order has been awarded to any party till the date of filing of this petition. The petitioner addressed letter dated 20-11-2000 to the Executive Director of the respondent Corporation pointing out the injustice meted out to the petitioner as well as other tenders in the competition. The petitioner challenged the changes made in the subsequent tender dated 6-11-2000 on the ground that the petitioner was qualified for the technical bid for the year 1994-95 and the petitioner was again qualified for the yea 1999-2000 and the petitioner is qualified in the technical bid as well as lowest in the price bid opened on 2-3-2000. Thus, the act of the respondent Corporation cancelling the petitioner's tender which was opened on 2-3-2000 and in not awarding the contract to the petitioner only on the basis of qualifications issued by the Regional Labour Commissioner regarding the areas by the letter dated 5-5-2000 which was produced subsequent to opening of the price bid by the respondent no.2 is illegal, arbitrary and unconstitutional. Hence, the tender of the petitioner could not have been cancelled arbitrarily, unreasonably or illegally as there is a clear term in the tender form that all the statutory payments are to be reimbursed by the respondent Corporation and the change in minimum wages if any ought to have been reimbursed by the respondent Corporation to the petitioner in the tender dated 12-7-1999. The subsequent letter dated 5-5-2000 of the Regional Labour Commissioner was brought to the

notice of the respondent Corporation by a private party who was interested in getting the contract and now that party is the respondent no.2 in this petition.

7. The tender dated 12-7-1999 was cancelled only on account of specification of the areas for the purpose of minimum wages by the Regional Labour Commissioner after opening of the tenders, commercial, technical and price bid of the tender dated 12-7-1999, the respondent Corporation came to know about the turn over capacity of the petitioner in the last two tenders of 1994-95 and 1999-2000 the respondent Corporation in order to eliminate the petitioner made changes and increased BEC by three times and two times so as to eliminate competition and to see that only one party would qualify in the technical bid so that there will be no competition in the commercial bid and the contract can be awarded to only one party who has qualified in the technical bid. Increase in requirement of annual turn over, solvency certificate and single contract the annual value by three times and two times in the tender dated 6-11-2000 is clear malafide and with ulterior motive of eliminating the petitioner and others tenders out of the competition and suit the condition for only one party. Therefore, the impugned action of the respondent Corporation is illegal, arbitrary and is violative of principles of natural justice and defeating the very purpose of flouting the tender namely to invite more competition and to get the lowest and the best offer for the contract.

8. The respondent Corporation has filed the affidavit-in-reply and it is stated therein that this Court cannot appreciate the question of facts within the purview of Article 226 of the Constitution of India and hence the petition deserves to be dismissed. Moreover, no prejudice is caused to the petitioner by noncompliance of the procedure required to be followed by the respondent Corporation under the law. The policy decision taken by the concerned authorities of respondent Corporation cannot be challenged before this Court and that is not violative of principles of natural justice or the procedure to be followed under the law. This petition has been filed by making false, frivolous and vexatious allegations against the respondent authorities and the petitioner has tried to prejudice the mind of the Court in order of take favourable orders by bringing undue pressure so that the tender submitted by him be accepted in contravention with the norms as well as criteria that may be required to be considered while accepting the bids. The petitioner has approached this Court at highly belated stage after cancellation of the

earlier tender and the re-invitation of fresh tender. The petitioner also participated in the tender dated 6-11-2000 after accepting the terms and conditions fixed by the respondent Corporation knowing fully well that it does not qualify for the said tender and having failed after resorting to all kind of pressure tactics. This petition has been filed by making all sorts of frivolous and vexatious allegation against the respondent Corporation. The challenge of the petitioner regarding the modification of the terms and conditions by changing the criteria with regard to EMD Solvency, Turn Over, Contract value is a policy decision taken by the respondent Corporation after assessing the present scenario including prevalent rates in comparison with previous tenders. As such, insertions of such terms and conditions being necessary, based on past experience, overall assessment cannot be said to be arbitrary, violative of Article 14 of the Constitution of India, malafide, allegations with a view to achieve ulterior motive, contrary to policy of the respondent Corporation are absolutely baseless and devoid of merits. In the the tender dated 12-7-1999, after opening 23 tender documents purchased, only 7 bidders submitted the bids and 4 bidders were shortlisted as qualified technically prima faice. However, the tender committee after examining the tender documents found that only one of the bidder had quoted the rates, not covering the minimum wages, which were not applicable to the some security points covering the Ahmedabad and Gandhinagar districts. Therefore, they were against the norms fixed by the BEC. The Tender Committee placed its proceedings for consideration before the competent authority and the competent authority after going through the said proceedings suggested to the Tender Committee to deliberate once again and gave their recommendations. After due deliberation on 14-6-2000, the Tender Committee finally recommended for re-tendering after modifying the following major clauses in order to have more transparency in the bid evaluation as well as to give equal opportunity to all the bidders to furnish their tender forms as per the terms and conditions decided by the respondent Corporation. Due to the interchangeability of personnel from one place to another, the said personnel are at times required to be shifted along with the rigs irrespective of the areas falling under different categories mentioned in the circular dated 5-4-1999 and to have uniformity of wages the tender requires to be reinvited. After the circular dated 5-5-2000, it was clarified that the rates of wages payable on the basis of area comprising A, B & C Zone-I or II as per the Government Notification, all the employees engaged from Avanibhavan (Chandkheda) and

having duties on rotation from various places shall be paid wages as payable at Ahmedabad fixed for area - A and the rates of wages cannot be reduced because of change in location. The allegations made by the petitioner of picking and choosing a person on the ground of arbitrariness, unreasonableness in violation of Article 14 of the Constitution of India based on extraneous and irrelevant consideration is absolutely devoid of merits more so when the dispute sought to be raised is in the form of a dispute of civil nature that cannot be decided by this Court within its extra ordinary jurisdiction under Article 226 of the Constitution of India. In the tender floated by the respondent Corporation having the modified terms and conditions were submitted by in all five bidders and such conditions mentioned in the Bid Evaluation Criteria (BEC) were required to be complied with by each bidder and the petitioner is not the only person that was required to comply with the terms of Bid Evaluation Criteria.

9. The petitioner quoted the rates which may appear lower on the comparison to the rates quoted by the other bidders. But the same were found not workable as minimum wages paid for Area/Zone "C" are too less as compared to the minimum wages applicable to Area/Zone A. As per tender specification (M.W. + 35.33% + Labilities + Service Charges) for security Supervisor (Skilled) and Armed Security Guard (Skilled) was Rs.11065.93 per point per month but the petitioner had quoted Rs.9723.96 per point for Security Supervisor & Armed Security Guard and the petitioner quoted Rs.1341.97 per point less than the workable rate. Hence, the tender of the petitioner was not considered and was finalized and cancelled. The tender that was invited by the respondent Corporation was related to various points under the respondent Corporation's A Project. Therefore, there was no question of awarding the contract to the bidder and the petitioner who had quoted the rates applicable to the Area/Zone C instead of Area/Zone A.

10. The contention that the petitioner ought to have been awarded contract with necessary revision of minimum wages is not sustainable in the eye of law because that revision is not at all permitted under the law. That action would amount to arbitrary and not in consonance with Article 14 of the Constitution of India. It was denied that the earlier tender dated 12-7-1999 was cancelled only on the ground of clarification of the areas by the Regional Labour Commissioner (C). In fact, the petitioner along with other bidders failed to qualify for the contract having quoted lower wages which were not

at all workable and the petitioner cannot blame the respondent Corporation for cancelling the aforesaid tender. The petitioner is fully aware about the terms and conditions of the tender dated 6-11-2000 and apprehending failure to qualify for the contract has chosen to approach before this Court by making false allegations by way of challenging the terms and conditions of the tender. The petitioner himself has accepted the fact that he did not qualify for the technical bid and hence there was no question of considering the aforesaid communications when the petitioner himself failed to fulfil the terms and conditions necessary for qualifying the BEC. There is no malafide intention or any reason to eliminate the petitioner from participating in the contract and the allegations made by the petitioner are baseless.

11. The respondent Corporation has filed Sur-Rejoinder affidavit, wherein it is stated that after having due deliberations, finally recommended for retendering after considering the relevant aspects new tender was issued on 6-11-2000, with the justification that was realized that clause 22 of the earlier tender notice relating to minimum wages was not very clear more particularly when substantial number out of the total 233 security points to be taken care of by the successful bidder are situated within a distance of 15 km. from the periphery of Ahmedabad Municipal Corporation where wages payable are as per the rates fixed for Ahmedabad, which comes under area 'A' due to interchangeability of the personnel from one place to another and the uniformity in the wages payable to them at the same rate of minimum wages to all the employees of the contractor without any discrimination is ensured. It is further stated that the respondent Corporation has stipulated that a bidder may opt to bid for 50% of the Security Points and it was open for the bidder not to submit the tender in respect of all 233 security points but for less number of security points. Hence, option was also given to the bidder to submit EMD of Rs.5,12,000/- in case of those who wanted to offer Security Services for 50% of security points and an EMD of Rs.10,24,000/- for those who wanted to offer for full requirement of security points. It was also considered that more number of contractors operating at the same time in respect same tender/contract may also result into more administrative problems and/or discrepancies in services conditions of contract labourers. Hence it was considered fit to have one contractor as far as possible or a few contractors in respect of all the 233 security points. Accordingly, in clause 2 (a) relating to commercial bid dated 12-7-1999

was modified in new clause 2 (a). The idea behind the said modification was also that the bidder who would be ready and willing and capable to bid for all 233 points would be a well established and reputed organization in a position to shoulder and discharge all legal obligations including those under various applicable labour legislations, particularly the obligation towards payment of minimum wages. On the basis of the changes the consequential modification in respect of clause 2 (d) relating to annual turn over was fixed at Rs.2 crores in place of annual turn over of Rs.68,87,000/- in the earlier clause 2 (b) as well as in respect of clause 1 (k) providing to the effect that bidder must have executed at least one contract of the annual value of not less than Rs.1 crore in place of Rs.35 lakhs as provided in clause 1 (i) of the earlier tender notice. Thus, the policy decision was taken by the respondent Corporation to give go-bye to the earlier tender notice and reinviting the same by new tender notice containing modified terms for safeguarding its interests, would not be subject to judicial scrutiny. The petitioner having participated in response to the new tender dated 6-11-2000 should not have come out with a present petition for declaring to the effect that change in the conditions of NIT are illegal and null and void and declaring the petitioner as qualified pursuant to the new tender notice dated 6-11-2000 and the said revision cannot be subject to judicial scrutiny merely because the said revision is not suiting to the petitioner.

12. The contention of the learned counsel for the petitioner is that the whole object of the revising the terms which have been challenged in this petition in the new tender dated 6-11-2000 is tailor made and only to give contract to the respondent no. 2 as appears from the intention of the respondent Corporation form its surrejoinder affidavit.

13. The respondent no. 2 is working as a contractor since 1993 and though the petitioner was qualified in the year 1994 and then in the year 2000 the petitioner was not given contract. The modification in the terms and conditions of the tender of 1999 has made only to give monopoly of the contract to the respondent no. 2 by the respondent Corporation as the respondent no. 2 is working from 1993 as contractor for doing the same job.

14. On the other hand, the learned counsel for the respondent Corporation contended that this Court has no jurisdiction to review the terms and conditions of the tender and has relied on the decision of the Supreme

Court reported in AIR 1994 SCW 3344. The Supreme Court has reaffirmed the guidelines given in the earlier decision in the case of Raunaq International Ltd. Vs.I.V.R. Constructions Ltd. and others, reported in AIR 1999 SC 393.

i. The modern trend points to judicial restraint in administrative action.

ii. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

iii. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

iv. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

v. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi-administrative sphere. However, the decision can be tested by the application of the "Wednesbury principle" of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides.

vi. Quashing decision may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

15. Relying on the aforesaid decision of the Supreme Court the learned counsel for the respondent Corporation has contended that the petitioner did not have qualifying criteria. In this very decision, the Supreme Court has laid down criteria, which is reproduced below.

"i. The price at which the other side is willing to do the work,

ii. Whether the goods or services offered are of the requisite specifications,

iii. Whether the person tendering has ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important,

iv. The ability of the tender to deliver goods or services or to do the work of the requisite standard and quality,

v. Past experience of the tenderer, and whether he has successfully completed similar work earlier,

vi. Time which will be taken to deliver the goods or services and often,

vii. The ability of the tender to take follow up action, rectify defects or to give post contract services.

16. Heard the learned counsel for the parties at length. I have carefully considered the submissions made by the learned counsel for the parties and gone through the relevant material on record. In some decisions the Supreme Court has discouraged and depricated the practice of engagement of contractual labourers where the work is of permanent nature. In the present case, the nature of work job is not of temporary but of permanent nature. In the ordinary manner the terms and conditions of the tender cannot be challenged in a writ petition under Article 226 of the Constitution of India. But where the terms and conditions of tender have been revised or modified malafidely and deliberately only in order to make monopoly of a particular party and in order to give contract to a specific party which is already working to supply the security services for the same purpose since 1993, the contract is supposed to give again to specific party, the terms and conditions have been revised in such a manner that nobody would come into competition except the party concerned which is already sitting on contract since 1993. The Court cannot shuts its eyes to examine the matter as to whether the modifications in the terms and conditions have been made deliberately in order to

eliminate competition for this purpose then the Court if comes to a conclusion that the modification or revision have been made motivatedly in the terms and conditions only to avoid competition, to give monopoly to a particularly party, eliminate all the tenders and they are tailor made, then the Court can interfere with the terms. Where the terms and conditions of the tender have been changed or modified or revised motivatedly with malafide intention only in order to eliminate the other bidders except to give contract to a particular party. Let us examine the facts and circumstances of the case.

(I) The respondent no. 2 is working as a contractor and supplying security services since 1993. In the year 1994-95, the respondent Corporation invited the tenders for the contract. The petitioner was found eligible for technical bid as well as lowest bidder. But due to Court's interim order, the contract could not be allotted to the petitioner. In the year 1999, the respondent Corporation again invited the tenders for two years' contract on 12-7-1999. The petitioner filled up the tender and complied with other formalities. The petitioner was found qualified technically which was opened on 2-3-2000 and the petitioner was found lowest one. But the contract was not given to the petitioner. The petitioner accepted the terms and condition regarding minimum wages prevalent at the relevant time as per Circular dated 1-4-99 marginal change was made subsequently in the minimum wages as per the letter dated 5-5-2000 making uniformity minimum wages applicable to zones and that letter was produced by the respondent no.2 before the respondent Corporation. Had the contract been given to the petitioner in the month of March April, 2000, the tender of the petitioner would not have been cancelled after receipt of the letter dated 5-5-2000. The respondent Corporation returned the EMD amount of Rs.10,24,000/- and gave advertisement for fresh tender on 6-11-2000 after four days. In case, the contract would have been given to the petitioner pursuant to the tender dated 12-7-1999 at the most the term regarding modification of minimum wages would have been made applicable after coming modified or changed minimum wages into force for which there was clause 42-A in the tender which requires difference on account of revision of minimum wages as and when revised rates and notified from time to time by the

Regional Labour Commissioner, Ahmedabad/State Government which ever is higher will be reimbursed to the contractor.

As per the tender terms there was no difficulty for giving reimbursement amount of revision of wages. Thus, the respondent Corporation was not intending to grant contract to the petitioner and searching out a way to cancel tender. Subsequently, the letter dated 5-5-2000 regarding modification of minimum wages was produced by the respondent no. 2 before the respondent Corporation which provided a ground to cancel the tender of the petitioner. The tender of the petitioner was cancelled though the petitioner should have been asked to comply with the modified minimum wages as required under Clause 42 of the tender, as the petitioner was ready and willing to comply with the same. But without giving any opportunity of hearing to the petitioner, the respondent Corporation cancelled the tender of the petitioner only at the instance of the respondent no. 2. The intention of the respondent Corporation was not fair, proper and transparent for advertising the new tender and cancelling the petitioner's tender after May, 2000 and returning the security deposit of the petitioner as deposit was required under the terms and conditions of the tender.

(II) The work of the contract was one and the same for which the tenders were invited in the year 1999 and in 2000. The points where security services was required in the year 1999 and 2000 are one and the same. The number of the persons to be engaged for the year 1999-2000 are the same. But the conditions have been changed or modified to the effect that solvency certificate of Rs.50 lacs which was required under the terms and conditions of the tender of 1999 was changed to solvency certificate of Rs. 1 crore in the tender of 2000. Tender dated 12-7-1999 requires only turn over of Rs.68,87,000/- (30% of the value of one year) in any two years of the last three financial years whereas the tender dated 6-11-2000 requires the annual turn over of Rs.2 crores. Tender dated 12-7-1999 requires single contract of not less than Rs.35 lacs whereas the tender dated 6-11-2000 requires single contract of annual value of not less than Rs.1 crore.

Thus, the respondent Corporation has made changes in the tender of 2000 increasing three times though the contract value is one and the same Rs.543 lacs as it was for the tender of 1999. Not only that, none of the tenders could have technical capability terms and conditions were modified in order to eliminating all other tenders except the respondent no. 2. For their motive the terms and conditions of the tender have been changed. The respondent Corporation should have advertised such tender having such reasonable terms and conditions which may be available to all the tenderers in competition so that the number of persons should be eligible in technical bid and transparency should be made available to all the tenderers.

But in the present case alterations and modifications in the terms and conditions of the tender of 2000 have been made only to eliminate the other bidders and tailor made and making suitable to the respondent no. 2 only. This conduct of the respondent Corporation making alteration/modification in the tender of 2000 for the same work and value and for the same time of contract is malafide, unfair, unreasonable and improper.

(III) Intention of the respondent Corporation is tailor made and contract for the respondent no. 2 has been made available obvious and is reflected from the assertions made in the affidavit-in-reply filed by the respondent Corporation that the substantial number of security guards who are working with the respondent Corporation as contractor labourers are duly protected by this Court as well as Industrial Court in different proceedings and they cannot be thrown out or terminated from their service. The assertions made by the respondent Corporation in the affidavit-in-reply clearly show that the contract labourers supplied by the respondent no. 2 and working since 1993 cannot be thrown on the road and invitation of the tender either in the year 1999 or 2000 are only fake and show to all public and to see that the contract is given to the respondent no. 2. Otherwise, the terms and conditions would have been such which may provide open competition to all the tenderers. It is admitted by the respondent Corporation in the

Surrejoinder affidavit that the idea behind the modification was also that the bidder would be ready and willing and capable to bid for all 233 points, would be a well established and well reputed organization in position to shoulder and discharge all legal obligations including those under various applicable labour legislations, particularly the obligation towards payment of minimum wages. The respondent Corporation has also made of up mind clear that the respondent no. 2 is a person or party well established and well reputed organization to discharge all the legal obligations and that cannot be done by any other party in the whole state of Gujarat. For that purpose, the terms and conditions have been modified which suit only to the respondent no. 2 and not to any tenderers of the year 2000.

(IV) In para 20 of the memo of the petition, the petitioner has stated that the tender dated 12-7-1999 was cancelled on account of the clarification of area for the purpose of minimum wages by the Regional Labour Commissioner as indicated by the change in the clause in the clause regarding minimum wages in the tender dated 6-11-2000. The said change should have been the only change in the condition of the tender which is for the same work for the same area for the same project but the respondent having come to know about the turn over capacity and other details of the petitioner in the last two tenders of 1994-95 and 1999-2000, wanted to eliminate the petitioner and therefore increase BEC by 3 times and 2 times so as to eliminate competition and to see that only one party would qualify in the technical bid so that there will be no competition in the commercial bid and the contract can easily be awarded to only one party who has qualified in the technical bid. The respondent Corporation has succeeded in eliminating competition as only one party has qualified in the technical bid. The increase in the requirement of annual turn over, solvency certificate and the single contract annual value by three times and two times is clearly malafide with an ulterior motive of eliminating the petitioner and other competition and to suit the condition for only one party. Clause 2 (d) in the tender dated 12-07-1999 shows that the requirement of the annual turn over of Rs.68,87,000/- was 30% of the value of one year

which has been increased to Rs. 2 crores i.e. 3 times and the basis of 30% of the value of one year has been given a go-bye. The action of the respondent Corporation is malafide and motivated by ulterior motive in in view of the fact that the other requirements of the contract like total value of the contract of Rs.543 lacs, the area of the contract, number of points, number of persons required, number of vehicles requires etc. have remain the same. The EMD is almost the same. The action of the respondent Corporation is clearly designed to select a particular party and to award the contract to it by eliminating the competition. The respondent corporation has stated, in para 4.16 of the affidavit in-reply, that with reference to para 19, 20, 21 and 22, the grounds taken by the petitioner in these paras are totally misconceived and based on apprehensions and therefore, not tenable in the eye of law and therefore they require outright rejection. Thus, the allegations of the petitioners mentioned in para 20 and 21 of the petition have not been specifically denied by the respondent Corporation in the affidavit-in-reply.

(V) In the tender contract, it is frivolously shown that the contract can be given to more than one party as per the term , commercial bid 2 (g) Page 67. But actual intention is to give contract only one party as appears from the assertions made by the respondent Corporation in the affidavit-in-reply.

(VI) When the respondent Corporation was asked by the Court that if the contract is given to more than one party, the conditions regarding turn over, solvency certificate and security deposit would remain the same ? Learned counsel for the respondent Corporation informed the Court that there is no change regarding the terms and conditions of the tender in the new tender even the work is given to more than one party. This condition appears to be highly unreasonable when the work regarding 233 points is given to more than one party, the conditions of the contract regarding turn over, solvency certificate, security deposit and other conditions would remain one and the same.

As stated above, the respondent Corporation was

intending to give the contract to a particular party eliminating all the parties including the petitioner. The respondent Corporation has not made any concession in the terms and conditions of the tender if the contract is given to more than one person or party.

(VII) The respondent Corporation has misled this Court by alleging that they are not interested in any particular party except in the high interest of the institution and transparency in the contract. But it appears that modifications and alternations in the terms and conditions have been made only in order to eliminate all the parties except one party suit for the contract. In para 4.5 of the affidavit-in-reply the respondent Corporation has stated that as per tender specification (M.W. + 35.33% Labilities + Service Charges) for Security Supervisor (Skilled) and Armed Security Guard (Skilled) was Rs.11065.93 per point per month but the petitioner had quoted Rs.9723.98 per point for Security Supervisor & Armed Security Guard, the petitioner had quoted Rs.1341.97 per point less than the workable rate. This rate quoted by the respondent Corporation is revised rate by the letter dated 5-5-2000. As per the tender of 1999 rate cited by the petitioner was workable and was within the criteria. It is mentioned that there was no question of awarding a contract to a bidder such as the petitioner who had quoted rates applicable to Area/Zone "C" instead of Area/Zone "A", but revision of minimum wages came into operation subsequent to opening of the tender.

17. It is asserted in the affidavit-in-reply that the plea of the petitioner that he ought to have been awarded the contract with necessary revision of minimum wages cannot be sustained in the eye of law for the reasons that such revision of minimum wages is not permitted under the law. As such, the action of the respondent, if revision of minimum wages is allowed, would be absolutely arbitrary and no in consonance with Article 14 of the Constitution of India. The assertions made by the respondent Corporation are totally misleading in view of the fact that the term No. 42 of the tender of 1999 regarding Circular dated 5-5-2000 minium wages was applicable. If the minimum wages are revised by the appropriate authority, the contractor was entitled for reimbursement and the petitioner has given minimum wages

according to the prevailing rates given by the authority concerned. Thus, the Corporation has tried to mislead this Court on the legal as well as factual aspect of the case.

18. In the facts and circumstances of this case, I am of the view that the terms and conditions under challenge are unreasonable, arbitrary, illegal and null & void and are not sustainable in the eye of law and therefor the same are liable to be quashed and set aside.

19. Accordingly, this petition is allowed and the terms and conditions mentioned in the prayer clause i.e. Paragraph No. 25 (a) and 25 (b) of the petition are hereby quashed and set aside, as those terms and conditions are quashed and set aside, the terms and conditions of the tender of 1999 would be applicable subject to the minimum wages, the respondent Corporation is directed to open the technical bid of all the bidders, as per the terms and conditions of the tender of 1999 within two weeks and ask the bidders to make necessary changes in the price bid in respect of minimum wages if required and to award contract to the bidder of lowest price bid. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/